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In The
Supreme Court of the United States

EDWARDO MONTOYA, ANTONIO MONTOYA, ESTEVAN MONTOYA, CARLOS MONTOYA, RICARDO MONTOYA, DANIEL MONTOYA, TOM GONZALES, and LEOPOLDO GONZALES,

Petitioners,

v.

TECOLOTE LAND GRANT by and through TECOLOTE BOARD OF TRUSTEES,

Respondent.

On Petition For Writ Of Certiorari To The New Mexico Court Of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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INTRODUCTION

The Petitioners want this Court to reinterpret its opinion in *Tameling v. United States Freehold & Emigration Co.*, 93 U.S. 644 (1876) in light of literal language within a nineteenth century Act of Congress implementing the Treaty of Guadalupe Hidalgo in the Territory of New Mexico and some recently repealed New Mexico State statutes which the Petitioners claim "provide the means for determining adverse valid rights under Spanish and Mexican law." Petition for Certiorari to the New Mexico Court of Appeals, hereinafter Petition, Question Presented for Review, at I. The Congressional Act is United States Statutes, Act of July 22, 1854, ch. 103, § 8, 10 Stat. 308, 309 (1854). The repealed New Mexico statutes are NMSA 1978, § 37-1-21 (1857-1858) and NMSA 1978, § 47-1-25 (1863-1864); see Petition App. at 76 and 78.

Tameling, which upheld the 1854 settlement of claims procedure in the New Mexico territory, has been applied in numerous New Mexico land grant cases including *H.N.D. Land Co. v. Suazo*, 44 N.M. 547, 105 P.2d 744 (1940); *Martinez v. Rivera*, 196 F.2d 192 (10th Cir. 1952); and *Sanchez v. J.T. Taylor*, 377 F.2d 733 (10th Cir. 1967). The application of the "*Tameling* bar" to New Mexico land grant disputes is settled law. The possible misapplication of the rule in the Petitioners' case before the New Mexico Court of Appeals is not proper grounds for a Writ of Certiorari. Sup. Ct. Rule 10.

The New Mexico statutes, NMSA 1978, § 47-1-25 and NMSA 1978, § 37-1-21, were repealed by the New Mexico State Legislature effective June 15, 2007. See, N.M. L. 2007, Ch. 266, § 2 (2007), as cited by Westlaw. Further, effective June 15, 2007, common lands within most statutory land grants in New Mexico were exempted from adverse possession actions by land grant heirs and others. NMSA 1978, § 49-1-11.2 (2007). The Petitioners' claim pre-dated these statutory changes, but the changes will govern future claims by individuals against New Mexico's statutory land grants and their governing boards. Thus, a reinterpretation of *Tameling* in light of purely historical state statutes would have no precedential value for future claims.

The Petitioners' Issue Presented for Review is not an appropriate subject for this Court's discretionary review. Sup. Ct. Rule 10.

RESPONDENT'S STATEMENT OF THE CASE

The Respondent is the Board of Trustees of the Tecolote Land Grant, a community land grant, and the statutory successor in interest to the town of Tecolote and to the Mexican settlers who resided in the town of Tecolote under Mexican rule. The Petitioners are *some* of the descendants of Salvador Montoya, who died intestate in 1840 and Jose Maria Montoya, who died intestate in 1905. Petition App. at 54.

The Petitioners' claim is based upon an 1824-1825 grant to Salvador Montoya from the Mexican government. Salvador Montoya and his companions were driven from the land by Indians in the late 1830s. Montoya's land was resettled by new settlers who founded the town of Tecolote. At least one eminent local historian has concluded that Salvador Montoya's rumored return to the property was a "fiction." Malcolm Ebright, *The Tecolote Community Land Grant*, Proceedings of the Historical Society of New Mexico Annual Conference, June 5-8, 1986. The settlers in the town of Tecolote obtained a "Repartimiento" of the property from the Mexican Government in 1838. The only direct reference in the "Repartimiento" to Montoya was in a boundary description.

The Petitioners correctly describe the implementation of the Treaty of Guadalupe Hidalgo in the New Mexico territories through a series of land grant proceedings before the Surveyor General and a confirmation of each successful land claim by Congress. Petition at 7. The Petitioners neglect to mention that Mexican land grants in California were reviewed by federal district courts under a procedure set up by United States Act of March 3, 1851, ch. 41, 9 Stat. 631 (1851). The distinction between the settlement of New Mexico land grants and California land grants and the effect of this distinction on judicial authority over Mexican land grants was discussed in *Tameling*, 93 U.S. at 661-662.

The Petitioners' predecessors in interest co-sponsored the original 1856 application to the Surveyor

General for a grant to the town of Tecolote under the New Mexico Territory settlement procedure. *Montoya v. Tecolote Land Grant ex rel. Tecolote Bd. of Trustees*, 2008-NMCA-014, ¶ 9, 143 N.M. 413, ___, 176 P.3d 1145, 1147; Petition App. at 11. Congress ratified the land grant as a community grant in the name of the town of Tecolote in 1858. *Montoya*, 176 P.3d 1147-1148; Petition App. at 11-12. In 1881, the Surveyor General re-surveyed the boundaries of the Tecolote land grant and included the land described in Salvador Montoya's 1824 request to the Mexican government, increasing the area of the Tecolote Land Grant from 21,637 acres to 48,123 acres. *Montoya*, 176 P.3d at 1148; Petition App. at 12. In 1885, attorney Thomas Catron and the Montoya heirs filed a petition requesting confirmation as a private grant, under the 1824 Mexican grant to Salvador Montoya. The Montoya Petition was rejected by the General Land Office. *Montoya*, 176 P.3d at 1148; Petition App. at 13. The parties appealed to the Secretary of the Interior and their appeal was rejected. *Montoya*, 176 P.3d at 1148-1149; Petition App. at 13-15. In 1902, President Theodore Roosevelt signed an official patent granting the disputed property to the Town of Tecolote. *Montoya*, 176 P.3d at 1149; Petition App. at 15-16. The management of the Tecolote Land Grant was vested in the Respondent in 1903 by New Mexico territorial legislation and the Respondent has remained the sole manager for over one hundred years. NMSA 1978, § 49-10-1 (1903).

The history of the Petitioners' predecessors in interest was described in detail in the New Mexico Court of Appeals' 2007 Opinion in this case. *Montoya*, 176 P.3d at 1147-1150; Petition App. at 9-18. The New Mexico Court of Appeals' application of the *Tameling* bar to the Petitioners' case was grounded on the prior consideration of Salvador Montoya's 1824 Mexican grant by three separate government bodies, the Surveyor General, Congress and the Secretary of the Interior, in two separate proceedings, in 1858 and 1885. There was no failure of procedural or substantive due process afforded the Montoya private claims or Petitioner's predecessors in interest.

In the one hundred years of its management of the Tecolote Land Grant, the Respondent has issued warranty deeds to 78 to 100 small farmers for private plots inside the common land area claimed by the Petitioners. These small farmers were not joined by the Petitioners and their property rights were not considered by the New Mexico District Court in its original judgment. The Petitioners have asserted the exclusive right to dictate the validity and extent of these intervening property interests.

ARGUMENT IN OPPOSITION TO REVIEW BY CERTIORARI

Summary of the Argument

This Court's review of final judgments from the highest state courts by writ of certiorari is discretionary. 28 U.S.C. § 1257; David D. Siegel, Commentary on 1988 Revision of 28 U.S.C. § 1257 (1988). The 1988 revision of 28 U.S.C. § 1257 also expanded the requirement of a final judgment to include judgments "by the highest court of a State in which a decision could be had." *Id.* This is important in the present case because the New Mexico Supreme Court refused to issue an opinion after granting certiorari and quashing the writ, sending the case back to the Court of Appeals. The Court of Appeals judgment is potentially subject to this Court's discretionary review by certiorari.

Sup. Ct. Rule 10 sets forth this Court's "considerations governing review on certiorari." The concluding sentence of Rule 10 states that "[A] petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." The Court of Appeals' Opinion in the present case, *Montoya*, 176 P.3d 1145, reprinted in Petition App. at 1-32, contains a proper statement of the law and a detailed analysis supporting its application to the Petitioners' claim. The Court of Appeals ruled that the New Mexico statutory scheme, repealed in 2007, should not require New Mexico district courts to "analyze ancient Mexican documents

under American law." *Montoya*, 176 P.3d at 1154; Petition App. at 31.

There is no compelling need for this Court to disturb the Court of Appeals' opinion in order to re-examine the application of the *Tameling* rule to the Petitioners' case. Sup. Ct. Rule 10.

A. THE NEW MEXICO COURT OF APPEALS CORRECTLY STATED THE *TAMELING* RULE, WHICH PREVENTS THE JUDICIAL REVIEW OF MEXICAN LAND GRANTS WHICH HAVE BEEN SUBJECT TO DIRECT CONGRESSIONAL ACTION.

The Court of Appeals restated the *Tameling* bar as follows:

> Thus, *Tameling* holds that under the New Mexico Surveyor General Act, when Congress confirms a land grant, its determination concerning the origin, nature, character, and size of a land grant is conclusive and is not subject to attack in a court or any other forum.

Montoya, 176 P.3d at 1150; Petition App. at 18-19.

The Petitioners argue that this rule was not applied in *Rodrigues v. United States*, 68 U.S. 582 (1863) and *Beard v. Federy*, 70 U.S. 478 (1865). *Rodrigues* and *Beard* concerned the California settlement process where the land commissioners' decisions were reviewable by the federal district court. As *Tameling* pointed out, this review provided a basis for

judicial jurisdiction which was missing from the New Mexico system in which the Surveyor General's recommendations were sent directly to Congress for Congressional ratification. *Tameling*, 93 U.S. at 662.

Tameling is consistent with modern statements of the law of foreign relations. Specifically, treaties which are not self-executing are only enforceable by domestic courts under Congressional implementation legislation. *Restatement (Third) of Foreign Relations Law* § 111(3); *Medellin v. Texas*, 128 S. Ct. 1346, 1356-1357 (2008). Treaties do not create private rights in domestic courts and private parties cannot sue directly in state or federal courts under a treaty provision. *McKesson Corporation v. Islamic Republic of Iran*, 539 F.3d 485 (D.C. Cir. 2008).

The New Mexico Court of Appeals considered the application of the *Tameling* bar to the Petitioners' case in great detail. *Montoya*, 176 P.3d at 1150-1154; Petition App. at 19-31. The Court of Appeals found that the only break in the application of the rule in New Mexico Territory was *Board of Trustees of Anton Chico Land Grant v. Brown, et al.*, 33 N.M. 398, 269 P. 51 (1928) where the parties were two Congressionally ratified land grants with overlapping territory. The Court of Appeals contrasted *Brown* with *Suazo*, where the Congressional ratification was held to be conclusive and binding on the courts and that the court was without jurisdiction to go behind a Congressional ratification. *Montoya*, 176 P.3d at 1150-1152; Petition App. at 20-25.

The New Mexico Court of Appeals questioned whether the Petitioners were really "third parties" to the Tecolote land grant confirmation. Rather, the Petitioners' "predecessors were actual participants in the proceedings challenging the actions of the United States government and lost." *Montoya*, 176 P.3d at 1152; Petition App. at 26. The Petitioners are seeking a review of prior determinations by federal authorities, including direct ratification by Congress.

The New Mexico Court of Appeals considered the effect of transferring nearly 20,000 acres of a land grant, with a total of 48,000 acres, on the character and size of the Tecolote Land Grant. *Montoya*, 176 P.3d at 1152; Petition App. at 25-26. The transfer to the Petitioners was not merely a minor adjustment of private interests within the land grant. The transfer also threatened to displace 78-100 small farmers who had intervening property rights.

Finally, the Court of Appeals considered New Mexico public policy favoring finality in determinations of land ownership under the Treaty of Guadalupe Hidalgo in order to provide land owners with "security in the ownership of their property." *Montoya*, 176 P.3d at 1154; Petition App. at 31. This public policy undoubtedly played a part in the 2007 Legislative repeal of territorial statutes giving special privileges to descendants of the holders of Mexican land grants.

Contrary to the Petitioners, the present case does not challenge ancient or modern rules of treaty implementation. Neither was the application of the *Tameling* bar to the Petitioners' case done without careful consideration of the facts of the case. The Petitioners claim they were third parties who did not alter the character of the land grant. The New Mexico Court of Appeals disagreed. It is not the function of this Court to reconsider applications of a properly stated rule of law. Sup. Ct. Rule 10. This Court should deny the Petitioners' Petition for a Writ of Certiorari against the New Mexico Court of Appeals in this case.

B. THE ISSUE OF CONSISTENCY WITH STATE STATUTORY PROVISIONS IS RESERVED FOR THE NEW MEXICO SUPREME COURT.

The Petitioners argue that the Court of Appeals Opinion is inconsistent with New Mexico statutory provisions. This argument moves outside the scope of 28 U.S.C. § 1257. Jurisdiction of this Court over final judgments of state courts is limited to cases which question the validity of a treaty or federal statute or where a state statute is "repugnant" to the Constitution, treaties or laws or federal administrative agencies.

The issue of whether a New Mexico Court of Appeals Opinion is inconsistent with state statutes is reserved for the Supreme Court of New Mexico. The

New Mexico Supreme Court refused to review the New Mexico Court of Appeals opinion by written opinion. The Petitioners have reached the end of their appellate rights on the issue of the repealed New Mexico statutes. This Court lacks jurisdiction to grant them relief on this issue. 28 U.S.C. § 1257.

C. THE COURTS ARE BOUND BY THE LEGISLATION IMPLEMENTING THE TREATY OF GUADALUPE HIDALGO.

The New Mexico Court of Appeals ruled that the Treaty of Guadalupe Hidalgo was not a self-executing treaty. *Montoya*, 176 P.3d at 1146; Petition App. at 7. Regardless of whether modern historians agree, Congress did, in fact, enact legislation implementing the settlement of Mexican land claims in New Mexico Territory. United States Statutes, Act of July 22, 1854, ch. 103, § 8, 10 Stat. 308, 309. It follows that this implementation procedure should be honored. *Medellin*; *Restatement (Third) of Foreign Relations Law* § 111(3).

It is inappropriate for the judiciary to parse the literal words of a treaty provision which was implemented by Congressional legislation over one hundred years ago. The Petition for Writ of Certiorari should be denied.

CONCLUSION

The Petitioners' argument consists of a request to review the New Mexico Court of Appeal's application of a well-established rule of law concerning jurisdiction over federal patents to land grants to the Petitioners' particular facts. The Petitioners fail to present any compelling reason why this Court should review the New Mexico Court of Appeal's well-reasoned application of the *Tameling* bar to the facts in Petitioner's case. The nineteenth century New Mexico statutes passed by New Mexico's Territorial Legislature have served their purpose and were recently repealed in furtherance of the public policy in favor of security in ownership of federally patented real property. The *Tameling* bar serves the same public policy and was appropriately applied in the Petitioner's case.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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